IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10449 of 2001

to

SPECIAL CIVIL APPLICATION No 10478 of 2001

with

SPECIAL CIVIL APPLICATION No 8401 of 2001

with

SPECIAL CIVIL APPLICATION No 8398 of 2001

with

SPECIAL CIVIL APPLICATION No 10639 of 2001

to

SPECIAL CIVIL APPLICATION No 10681 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANHAR DYEING & PRINTING MILLS

Versus

UNION OF INDIA

Appearance: (In All SCAs)

MR KAMAL TRIVEDI WITH MR UDAY JOSHI for M/S TRIVEDI & GUPTA for Petitioners

MR DN PATEL for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE D.A.MEHTA

Date of decision: 21/02/2002

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. Rule. Mr.D.N.Patel, learned Standing Counsel waives service of Rule on behalf of respondents.

#. At the request made by learned counsel appearing for the parties, all these matters are taken up for hearing together and are being disposed of by this common order.

#. On the notice being issued, the respondent No.2 has filed Affidavit-in-reply in Special Civil Applications No.8401 of 2001 and 8398 of 2001.

#. The main contention advanced by Shri Kamal Trivedi on behalf of petitioners is that there is no liability for payment of Cess under Section 5A of the Textiles Committee Act, 1963, more particularly, in view of the first proviso to the said Section.

#. On behalf of respondents, learned counsel Shri D.N.Patel raises a preliminary objection regarding availability of alternative remedy of appeal to the petitioners under Section 5A(7) of the said Act. It is submitted that as the Tribunal is in existence, the petitioners should first exhaust the remedy of appeal.

#. It is not in dispute that the alternative remedy of appeal available to the petitioners under the Act has not yet been availed. We therefore find substance in the

preliminary objection raised on behalf of respondents. The petitions are disposed of with liberty to the petitioners to avail the alternative remedy of Appeal before the Tribunal constituted under Section 5B of the Textiles Committee Act, 1963. So far as the period of limitation is concerned, since the petitioners were prosecuting these petitions, in case the Appeals are filed by petitioners before the Tribunal within a period of thirty days from the date of this order, the respondents shall not raise any objection on the question of limitation. We also direct that till decision by the Tribunal on the stay application to be filed by respective petitioner along with the Appeal is taken by the Tribunal, no steps for coercive recovery shall be taken by respondents.

#. With these directions and observations, all these petitions are disposed of. Rule is discharged. No order as to costs. Direct Service is permitted.

(D.M.Dharmadhikari, C.J.)

(D.A.Mehta, J.)

(sunil)